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Dated: July 20, 2009 Signature: W. J. Kramer #46,229/
(William J. Kramer)

Docket No.: 30835/306066
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Todd R. Manion, et al.

Application No.: 10/810,917

Confirmation No.: 9418

Filed: March 26, 2004

Art Unit: 2144

For: Method for Efficient Content Distribution
Using a Peer-to-Peer Networking Infrastructure

Examiner: Greg C. Bengzon

**PETITION UNDER 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT
AND REMAIL OFFICE ACTION**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

This petition is submitted in response to a dialogue between Examiner Bengzon and the undersigned from July 13, 2009 through July 15, 2009. On July 13, 2009, Examiner Bengzon left a voice mail for the undersigned inquiring about the status of the above matter as the 6-month period for reply to a non-final Office Action dated August 11, 2008 (“the Action”) had elapsed. Examiner Bengzon also explained that a reply to the Action had not been received by the United States Patent and Trademark Office (“the Office”), and he was, therefore, calling to ascertain whether Applicants had filed a Response. The undersigned checked both PAIR (Patent Application Information Retrieval) and the docketing department of the undersigned’s firm, Marshall, Gerstein & Borun LLP, and confirmed that neither the undersigned nor the undersigned’s firm had ever received the Action. On July 14, 2009, the undersigned left a voice mail for Examiner Bengzon, and on July 15, 2009, the undersigned and Examiner Bengzon held a telephonic conversation and confirmed the above facts.

This petition is submitted per M.P.E.P. §§711.03(c)(I) and 711.03(c)(I)(A). No fee is due. A Notice of Abandonment has not yet been mailed as best is known to the undersigned.

Applicants maintain that this application is not in fact abandoned because Applicants failed to receive the Action. The holding of abandonment should be withdrawn and the Action should be re-mailed based on the following:

1. The Office allegedly mailed a non-final Office Action (the Action) in the above-identified application to the Applicants on August 11, 2008.
2. A six-month date to reply to the Action apparently was set for February 11, 2009, with a shortened statutory three-month due date set for November 11, 2008.
3. The undersigned hereby states that the Action was not received by the undersigned or the undersigned's firm, Marshall, Gerstein & Borun LLP.
4. The undersigned attests that a search of the file corresponding to this application, the file jacket, and docketing records indicates that the Action was not received.
5. It is the standard practice of Marshall, Gerstein & Borun LLP to record all received Office Actions on the file jackets of the files corresponding to the applications.
6. A copy of the file jacket for this application is attached as Exhibit A. The file jacket indicates that the Action was not received by Marshall, Gerstein & Borun LLP. Namely, if the Action were received, an indication of the Action, its mailing date, and the three-month due date would have been recorded on the file jacket in the left-hand column.
7. It is the standard practice of Marshall, Gerstein & Borun LLP to record all received Office Actions in an electronic docketing system.
8. A copy of an electronic docket report for this application is attached as Exhibit B. The electronic docket report for this application indicates that the Action was not received by Marshall, Gerstein & Borun LLP. In particular, if the Action had been received, a three-month reply docket date and due date of November 11, 2008 would have been recorded in the "Docket Dt." and "Due Date" columns on the second page of the docket report with a code of "POA1" in the "Action" column. Similarly, four-month and five-month extension dates of December 11, 2008 and January 11, 2009 would have been recorded with respective codes of EXT1 and EXT2. Finally, the six-month date for reply would also have been recorded with a code of "POA2".

9. A copy of a complete, firm-wide electronic docket report for all docketed matters with due dates of November 1, 2008 through November 30, 2008 is attached as Exhibit C. If the Action were received by Marshall, Gerstein & Born LLP, it would have been reported on the complete, firm-wide electronic docket report with a respective due date of November 11, 2008 and with a code of "POA1."

10. It is the standard practice of Marshall, Gerstein & Borun LLP to record all received Office Actions on a handwritten log.

11. A copy of the handwritten log used by the docketing department of Marshall, Gerstein & Borun LLP is attached as Exhibit D. The handwritten log records Office Actions received each day by Marshall, Gerstein & Borun, LLP, the attorney docket numbers, the Patent Application Numbers, codes indicating the types of actions, and the due dates for replying to the actions. Exhibit D includes a copy of the handwritten log from August 8, 2008 to September 12, 2008. If the Action were received by Marshall, Gerstein & Borun LLP between these dates, it would have been recorded on one of the pages in Exhibit D with a code "POA1" and the three-month date of November 11, 2008.

CONCLUSION

Applicants maintain that this application is not, in fact, abandoned because Applicants failed to receive the Action allegedly mailed on August 11, 2008. Evidence supporting that the Action was not received is attached as Exhibits A, B, C and D. The holding of abandonment should be withdrawn and the non-final Office Action should be re-mailed.

Dated: July 20, 2009

Respectfully submitted,

By___/W. J. Kramer #46,229/___
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